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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
IN TACOMA

UNITED STATES OF AMERICA,)
Plaintiff,) No. CR16-5073RBL
vs.)
DANIEL FRANEY,)
Defendant.)

MOTION FOR CONTINUANCE

BEFORE THE HONORABLE RONALD B. LEIGHTON
UNITED STATES DISTRICT COURT JUDGE

April 1, 2016

APPEARANCES:

Todd Greenberg
Assistant United States Attorney
Representing the Plaintiff

Mohammad Hamoudi
Assistant Federal Public Defender
Representing the Defendant

11:03:51AM 1 THE CLERK: This is in the matter of the United
11:03:54AM 2 States of America versus Daniel Seth Franey,
11:03:57AM 3 Cause No. CR16-5073RBL. Counsel, please make your
11:04:02AM 4 appearances.

11:04:02AM 5 MR. GREENBERG: Your Honor, Todd Greenberg for the
11:04:04AM 6 United States.

11:04:05AM 7 THE COURT: Good morning, Mr. Greenberg.

11:04:05AM 8 MR. HAMOUDI: Good morning, your Honor. Mohammad
11:04:09AM 9 Hamoudi from the Federal Defender's Office. I am here on
11:04:10AM 10 behalf of Mr. Franey, seated to my left.

11:04:12AM 11 THE COURT: Mr. Hamoudi, good morning.

11:04:16AM 12 Mr. Franey, good morning.

13 THE DEFENDANT: How you doing, sir?

11:04:18AM 14 THE COURT: Good. This matter is before the court
11:04:21AM 15 on a motion for continuance. The proposal submits that
11:04:33AM 16 there is time needed to gather and assemble and analyze
11:04:39AM 17 the evidence, and so forth. I have been informed that
11:04:47AM 18 Mr. Franey will not sign a waiver of speedy trial. If
11:04:53AM 19 Mr. Hamoudi would make the case for the continuance, we
11:04:59AM 20 will go from there.

11:05:00AM 21 MR. HAMOUDI: May I, your Honor?

11:05:03AM 22 THE COURT: Absolutely.

11:05:06AM 23 MR. HAMOUDI: Your Honor, this case may seem
11:05:08AM 24 somewhat straightforward by reviewing the indictment, but
11:05:12AM 25 when you look deeper into it, it is much more complicated

11:05:15AM 1 and involves a lot of factual issues that need to be
11:05:18AM 2 reviewed and investigated.

11:05:20AM 3 Mr. Greenberg has been helpful in streamlining us
11:05:25AM 4 receiving discovery in this case. There is thousands of
11:05:28AM 5 documents. There is over 2,000 pages of written material.
11:05:31AM 6 There is hundreds of hours of recordings. For Mr. Franey
11:05:41AM 7 to receive an effective representation in this case we are
11:05:44AM 8 going to need to listen to everything, analyze it, discuss
11:05:46AM 9 it with him, and make decisions.

11:05:49AM 10 THE COURT: Have you discussed this matter fully
11:05:51AM 11 with your client?

11:05:52AM 12 MR. HAMOUDI: Yes, we have, your Honor.

11:05:54AM 13 THE COURT: Mr. Franey, do you believe you
11:05:57AM 14 understand the need for more time to analyze the evidence?

11:06:04AM 15 THE DEFENDANT: Your Honor, if I may say just a
11:06:07AM 16 couple of things? I understand this process. I
11:06:12AM 17 understand there is a lot of information to go over for
11:06:18AM 18 these guys. In my mind, it is a little more
11:06:20AM 19 straightforward.

11:06:24AM 20 I have been harassed by the FBI for five years. They
11:06:27AM 21 have come at me with informants and agents for five years,
11:06:30AM 22 asking for guns, asking me to take guns. I have refused.
11:06:34AM 23 This last time I did not use my better judgment. I toyed
11:06:40AM 24 with them because I was broke. I invited them to Islam,
11:06:44AM 25 because my dad told me maybe I should start inviting the

11:06:48AM 1 feds to Islam. They got me in some hot water, I
11:06:52AM 2 understand. But I am not a terrorist. I would never hurt
11:06:55AM 3 a man, woman, or child, if I was in a war on one side or
11:07:01AM 4 the other.

11:07:03AM 5 I would really like to see my family. They are being
11:07:07AM 6 denied visits right now. I'm not supposed to be saying
11:07:12AM 7 any of this. I'm sorry, brother.

11:07:14AM 8 When my family first left in 2011, they came at me
11:07:18AM 9 with informants and agents. Before I got married again
11:07:21AM 10 they came at me with agents. After I got married they
11:07:24AM 11 came at me with agents. And then they came at me last
11:07:26AM 12 summer with agents.

11:07:28AM 13 The first thing I asked the guy was, are you working
11:07:31AM 14 with the feds? He said no, I laughed, and then I am here
11:07:34AM 15 now.

11:07:35AM 16 I didn't understand weapons possessions meant being
11:07:39AM 17 around them. I thought as long as I didn't take one from
11:07:41AM 18 them, possess, own, they couldn't charge me with anything.

11:07:44AM 19 MR. HAMOUDI: Your Honor, just so --

11:07:46AM 20 THE DEFENDANT: I'm sorry.

11:07:47AM 21 THE COURT: That's all right.

11:07:49AM 22 MR. HAMOUDI: Let me interject here. I think the
11:07:53AM 23 strain he is feeling right now is that he is in -- He
11:07:54AM 24 doesn't have a felony record. He is in custody at the
11:07:57AM 25 detention center. Currently he is in the special housing

11:08:00AM 1 unit, and he hasn't been able to see his wife or kids. As
11:08:04AM 2 the court is aware, that puts an incredible amount of
11:08:07AM 3 strain on a family man.

11:08:09AM 4 We are trying to find a way to allow him to have
11:08:12AM 5 contact visits with his wife and kids. His children miss
11:08:15AM 6 him. Some of this issue with the ability to continue the
11:08:19AM 7 case has to do with the fact of these pretrial restraints
11:08:23AM 8 that are pressing on him.

11:08:24AM 9 So that's sort of where we are at, your Honor. We
11:08:27AM 10 need to do our job. We are trying to balance things here.

11:08:31AM 11 THE COURT: All right. Do you understand why they
11:08:34AM 12 need more time? That's the point that I need to address
11:08:40AM 13 before I rule on this motion.

11:08:44AM 14 THE DEFENDANT: I understand that they have a
11:08:45AM 15 heavy workload and this case alone is going to take a lot
11:08:48AM 16 of time, and it is probably just going to go months. Once
11:08:52AM 17 in a while we will come see you again, and I will go back,
11:08:55AM 18 and eventually we will work something out. I get that.
11:08:58AM 19 Like he said, it has been two months now.

11:09:00AM 20 They admitted to me yesterday, yes, I am in isolation,
11:09:04AM 21 I don't get to go to rec with anyone, I don't get a
11:09:06AM 22 neighbor, I don't get a cellie, I don't get to go to GP,
11:09:10AM 23 because they don't want me telling people how I feel about
11:09:11AM 24 the government, or my ideas about Islam. I would just ask
11:09:15AM 25 to be treated like anyone else.

11:09:16AM 1 There are people in there who kill people, rape
11:09:17AM 2 people, burn people, rob people, and beat people. I just
11:09:20AM 3 want to go to GP so I can have contact with my wife, which
11:09:24AM 4 they are still not giving me because -- I mean, she is a
11:09:27AM 5 middle-class white American girl from Bend, Oregon, that
11:09:31AM 6 worked as a daycare worker for ten years. I don't know
11:09:33AM 7 what their concern is.

11:09:35AM 8 THE COURT: I appreciate that, but focus on the
11:09:37AM 9 question about do you understand they need -- Do you
11:09:45AM 10 sincerely believe that they need more time?

11:09:48AM 11 THE DEFENDANT: If this were ever to go to trial,
11:09:50AM 12 I would say they need more time, yeah.

11:09:53AM 13 THE COURT: All right. What amount of time do you
11:09:57AM 14 need?

11:09:59AM 15 MR. HAMOUDI: In the motion, your Honor, we set it
11:10:02AM 16 out -- we asked for a trial date at or before
11:10:08AM 17 December 2016. So right now what we have assessed is that
11:10:15AM 18 we have to make some travel arrangements. The case
11:10:20AM 19 involves multiple jurisdictions. We have to travel with
11:10:23AM 20 an investigator to go to those jurisdictions and maybe
11:10:25AM 21 contact witnesses. But to make a proper assessment, we
11:10:28AM 22 really have to review these documents, which is going to
11:10:31AM 23 take some time, and listen to the audio recordings, which
11:10:34AM 24 I think are very important.

11:10:35AM 25 THE COURT: Mr. Greenberg, when do you think the

11:10:37AM 1 evidence will be amassed for -- probably rolled out,
11:10:41AM 2 processed, but to get all the information for Mr. Hamoudi?
11:10:46AM 3
11:10:49AM 4 MR. GREENBERG: Yes, your Honor. I just delivered
11:10:54AM 5 a package to them this morning. They now have the bulk of
11:10:57AM 6 the discovery. There are some recordings that still are
11:11:02AM 7 being processed and going through some complicated
11:11:06AM 8 processes at FBI headquarters that need to be undertaken
11:11:08AM 9 before they can be produced. Those will be produced in a
11:11:11AM 10 couple of weeks. They will then have all of the
11:11:13AM 11 recordings -- the undercover recordings.
11:11:18AM 12
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11:11:36AM 17
11:11:39AM 18
11:11:42AM 19
11:11:46AM 20
11:11:50AM 21
11:11:51AM 22
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11:12:03AM 25

There is some other evidence that is not ready to produce right now and is going through processes. There may be a need for some CIPA proceedings. I am trying to avoid that. We are dealing with that kind of issue, your Honor.

It is a fairly voluminous discovery production. And I know this court has experience with these sorts of things. They can take some time. I think the motion is well founded. I would think that they need a substantial amount of time to truly digest this material and be prepared for trial.

THE COURT: Is September 6th enough time, or not?

MR. HAMOUDI: I think at this time we can probably put it out to September 6th. We can always come back to the court, your Honor, and reassess the date once we are

11:12:09AM 1 through this first round of discovery.

11:12:10AM 2 THE COURT: You know, I've got a real extensive
11:12:14AM 3 trial schedule. I will continue this trial date until
11:12:27AM 4 September 6, and we will send out the adjusted motions
11:12:33AM 5 deadline.

11:12:34AM 6 MR. GREENBERG: Your Honor, I think I am scheduled
11:12:36AM 7 to be out of town that day.

11:12:38AM 8 THE COURT: You are?

11:12:41AM 9 MR. GREENBERG: Is it possible to look at that
11:12:42AM 10 following week?

11:12:43AM 11 THE COURT: The 12th?

11:12:45AM 12 MR. GREENBERG: Yes.

11:12:45AM 13 THE COURT: I have a big personal injury case
11:12:48AM 14 scheduled for the 12th. Obviously this case would take
11:12:52AM 15 precedence.

11:12:54AM 16 MR. GREENBERG: I do believe this case would
11:12:56AM 17 take more than a week to try. I do think -- Is the 6th
11:13:03AM 18 just the day after Labor Day? I am out of town.

11:13:06AM 19 THE COURT: September 12th.

11:13:08AM 20 MR. HAMOUDI: That's fine, your Honor.

11:13:09AM 21 THE COURT: Is that convenient? I will cite the
11:13:24AM 22 normal language, a failure to grant such a continuance in
11:13:29AM 23 this proceeding would likely result in a miscarriage of
11:13:32AM 24 justice. Mr. Franey does understand why this continuance
11:13:42AM 25 motion has been brought. So I am going to grant the

11:13:51AM 1 **motion.**

11:13:52AM 2 **The trial date will be September 12. A pretrial**
11:14:04AM 3 **motions date shall be filed -- The date will be filled in**
11:14:13AM 4 **by Ms. Boring. You will have the completed order post**
11:14:22AM 5 **haste, by the end of the day. Anything further?**

11:14:27AM 6 **MR. GREENBERG: Not from the government.**

11:14:28AM 7 **MR. HAMOUDI: Nothing else, your Honor.**

11:14:30AM 8 **THE COURT: All right. Court is at recess.**

9 **(Proceedings adjourned.)**

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C E R T I F I C A T E

I, Barry Fanning, Official Court Reporter for the
United States District Court, Western District of
Washington, certify that the foregoing is a true and
correct transcript from the record of proceedings in the
above-entitled matter.

/s/ Barry Fanning
Barry Fanning, Court Reporter